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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re V.R., A Person Coming
Under the Juvenile Court Law.

B302818
(Los Angeles County
Super. Ct. No.
17CCJP01472D)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

C.M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Annabelle G. Cortez, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, Peter Ferrera, Principal Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

C.M. (mother) appeals from the juvenile court's order terminating her parental rights to her daughter V.R. (the child) pursuant to Welfare and Institutions Code¹ section 366.26, subdivision (b)(1). Mother argues that the sibling relationship (§ 366.26, subd. (c)(1)(B)(v)) and the parental benefit (§ 366.26, subd. (c)(1)(B)(i)) exceptions to the termination of parental rights applied. We affirm.

II. BACKGROUND

A. Dependency Jurisdiction

The child, who was two years old when the dependency petition was filed, lived with mother and her three half-siblings, A.L.M., A.M.M.,² and A.Z., who were 11 years old, ten years old, and nine years old, respectively. The child's father was deceased.

¹ Further statutory references are to the Welfare and Institutions Code.

² We will refer to A.L.M. and A.M.M. collectively as the "older sisters."

On October 31, 2017, the Los Angeles County Department of Children and Family Services (Department) filed a petition pursuant to section 300, subdivision (b)(1), alleging that the children were at a substantial risk of harm because mother was unwilling or unable to care for them. The Department alleged mother would lock the children out of the home for extended periods of time without supervision. The Department also alleged the children had head lice, wore dirty clothing, and had matted hair; and that the family home was dirty and lacked electricity.

B. Adjudication and Disposition Hearings

On November 1, 2017, the juvenile court found a prima facie case to detain the children from mother. On that same date, the four children were placed in a single foster home. On November 8, 2017, the older sisters were removed from that home and placed in two separate foster homes because of their behavior. The older sisters used profanity with each other and the other foster children and demonstrated “parentified behaviors” toward the younger children by insisting on performing tasks that would ordinarily be provided by a caregiver. They became defiant when they were redirected.

On December 1, 2017, the juvenile court sustained the section 300 petition as alleged.

On January 11, 2018, the juvenile court declared the children dependents of the court. A.Z. was ordered placed with her father. The child and the older sisters were ordered suitably placed. The court ordered reunification services for mother. The court permitted mother monitored visits with the children but

prohibited her from bringing other people to the visit without Department approval.

C. *March 15, 2018, Progress Report*

As of a March 15, 2018, progress report, A.Z. was placed with her father.³ The older sisters were in foster care in separate homes and the child was in a different foster home. A social worker observed the child was well adjusted and well bonded with the foster mother.

On January 3, 2018, mother arrived 15 minutes late to a scheduled visit and then argued with the social worker about the case plan. The social worker advised mother that it was inappropriate to discuss the case plan in front of the children and that such discussion could result in termination of the visit. The social worker then left; and when she returned at the end of the visit, mother yelled at her about the court orders.

Mother had difficulty arriving on time for scheduled visits. Specifically, between January 12, 2018, and March 7, 2018, mother did not appear once, arrived 10 to 45 minutes late on eight occasions, and cancelled on five other occasions. Mother was on time on three occasions. The foster parents reported that the children became “distraught and defiant” when mother cancelled visits or appeared late. Visits were “very chaotic”; and mother did not have control over the children, who were

³ In July 2018, the juvenile court terminated jurisdiction over A.Z., and granted her father sole legal and physical custody. Although mother was permitted monitored visits, at some point during these dependency proceedings, A.Z. stopped visiting with the child and the older sisters.

confrontational and argued with her, especially when she tried to correct their bad behavior.

D. *July 12, 2018, Status Review Report*

On March 12, 2018, mother alleged to a dependency investigator that the foster father had sexually abused the child. According to mother, the child said that “her cookie” hurt. Mother refused to release the child to the foster parents but eventually released her to the Department’s custody. The monitor, who was present during the visit, did not hear the child say that the foster father had hurt her. The social worker met with the child and did not observe any signs of distress. When the child used the restroom to urinate, she did not complain of pain and no blood was visible. The child had no marks or bruises on her back, buttocks, legs, or thighs. The Department investigated the allegation of sexual abuse and had the child undergo a medical examination, which did not reveal potential sexual abuse. The Department determined that mother’s allegation was unfounded.

On March 29, 2018, the Department notified the juvenile court that the child’s foster parents had requested that the child be removed from the home because they were afraid for their safety; mother had claimed to know where they lived and threatened to harm them. The Department moved the child to a different foster home.

On April 25, 2018, during a visit, the monitor told mother that the child had been moved to a different foster home. Mother nonetheless asked the child numerous times whether she was living in the prior foster home and whether she was being

touched inappropriately. Mother argued with the monitor, who terminated the visit. Mother refused to leave and Department personnel had to intervene. Mother continued to argue in front of the children and eventually handed the child to the monitor. As she neared the exit, mother yelled loudly to other clients that “[t]his is how they cover up sexual abuse.”

On May 30, 2018, during another monitored visit, mother continued to talk about case details with the children, even after being told numerous times to stop. The monitor eventually terminated the visit and called for assistance. The social worker who responded observed that the older sisters were crying and appeared distraught. Mother shouted profanities at the monitor and the social worker and threatened to sue them. Mother eventually left. The child remained quiet throughout the visit and appeared indifferent to the commotion.

The new foster mother stated that during this reporting period, the child became very quiet after visits. When the foster mother told the child that she loved her and would protect her, the child asked whether the foster mother was a “liar.”

The child participated in weekly meetings with a therapist, who reported that after visiting with mother, the child appeared exhausted and would wet the bed. The child asked her foster parents whether they were liars, which the therapist opined was the result of the child having heard mother’s accusations. The therapist also opined that mother created a stressful and detrimental environment for the child.

Mother continued to have difficulty regularly and timely arriving for visits. From March 12, 2018, to June 6, 2018, mother arrived on time on seven occasions, cancelled or had visits cancelled for lateness on 13 occasions, and arrived 10 to 20

minutes late on six occasions. According to the respective foster parents, the child and the older sisters became distraught and defiant when mother cancelled or was late for visits. Further, the monitor reported that the visits were mostly chaotic because mother did not have control over her children. In addition, mother was agitated and failed to comply with the Department's directives. Although mother's conduct to members of the Department was combative, she was caring and loving toward her children. Mother brought food and drinks to the visits and ensured that the children ate the food before the snacks. The children showed affection toward mother and one another during the visits.

E. *July 12, 2018, Hearing*

On July 12, 2018, the juvenile court terminated mother's family reunification services and set the matter for a section 366.26 hearing. The court allowed mother to continue monitored monthly visits, with the Department having discretion to liberalize.

F. *November 8, 2018, Status Review Report*

As of the November 8, 2018, status review report, the child remained in foster care. The child had met all her therapy goals and was medically discharged from therapy.

Mother continued to have difficulty appearing regularly for visits. From June 11, 2018, to October 6, 2018, mother arrived on time on four occasions, cancelled or had visits cancelled for

lateness on six occasions, and arrived 15 minutes to an hour late on two occasions.

Mother attended a visit on June 11, 2018, accompanied by an unidentified man who gave the children a hug. During another visit on June 26, 2018, an unidentified man joined the visit and dropped off food for the children.⁴ The child continued to show anxiety after visits with mother.

During an August 20, 2018, visit, mother and the children brought gifts for one another and enjoyed opening the gifts and taking photos together.

G. *March 7, 2019, Interim Review Report*

Between October 6, 2018 and February 12, 2019, mother failed to confirm two visits, which resulted in the visits being cancelled. Mother was on time for the other four scheduled visits.

The child's foster parents noted that the child returned from her visits with mother and the older sisters "a different girl," and would complain about having a stomach ache. Mother had yet to comply with court orders, including participating in random drug testing, individual counseling, and a psychiatric evaluation.

H. *May 1, 2019, Status Review Report*

During a February 26, 2019, visit, the children were observed to genuinely love mother and one another.

⁴ According to a supervisor at the foster family agency, these were two "different men."

During a March 12, 2019, visit, mother asked the child inappropriate questions. Upon seeing a small scratch on the child's chin, mother asked her who was hitting her. At the end of the visit, mother confronted the social worker and stated that she did not want the child to call the foster parents "mommy and daddy."

A social worker described a March 26, 2019, visit as upbeat and positive. Mother, the older sisters, and the child celebrated the child's birthday. Towards the end of the visit, the child told the social worker that she wanted to go home with her "mommy," referring to mother. There was no indication that the child had been coached to make this statement.

Mother's behavior during visits had become less erratic and less hostile. The social worker, however, remained concerned about mother's continued confrontational behavior. Mother had not yet participated in therapy or random drug testing and had not undergone a psychiatric evaluation.

I. *Last Minute Information filed May 1, 2019*

On April 22, 2019, the child was placed with another foster family who had provided respite care to the child for two weeks in 2018. The new foster parents expressed a strong desire to adopt the child.

J. *CASA Reports*

In a report filed on August 21, 2019, a court appointed special advocate (CASA) observed that the child was happy with the new foster family, which included the foster parents and their

three children. The child had begun to participate in extracurricular activities such as ballet and piano. The foster family reported that the child and the foster parents' other children loved one another. The child was eating and sleeping well. The child recently began to refuse to enter the car to go to visits with mother.

In a report filed on October 23, 2019, the CASA stated that the child was positively bonded with her new foster family. The child refused to attend visits with mother and the older sisters because she was distressed by the visits.

K. *October 30, 2019, Status Review Report*

Although the child had previously been medically discharged from therapy, she exhibited signs of anxiety and distress before and after visits with mother. The social worker therefore submitted a referral to the Department of Mental Health for counseling. The child had not yet begun counseling.

The foster mother noted that the child would often wake up whining that she did not want to attend the visits with mother and the older sisters. About five to seven times a day, the child's mood would change from happy to sad, and the child would cry, stating that she did not want to go on her visits. The visits with the older sisters were becoming progressively hostile because the older sisters would tell the foster parents that the child could not call them "mom and papa." On one occasion, the older sisters took the child to a tunnel in a slide and told her that she could not call the foster parents "mom and papa" because they were not her family. The older sisters yelled at the child to "tell them they are not your family." The child reported the older sisters'

statements to the social worker. She also told the social worker that she loved her foster family and that she did not like it when her sisters told her that she could not love them. She said that she did not want to attend visits because she did not want to hear her sisters say that the foster family was not her family.

During a May 14, 2019, visit, mother continued to discuss case issues in front of the children, and repeatedly had to be reminded not to do so. When the child was leaving the visit, she told the social worker that she “wanted to go home and see her other mommy.”

Mother and the older of the older sisters failed to appear for a visit on June 25, 2019. The child visited with the younger of the older sisters, with whom she appeared to have a sibling bond. The children had a hard time saying goodbye to each other.

At a July 9, 2019, visit, mother asked the child several times whether someone had hurt her. The child and mother watched movies together on the phone and cuddled.

On July 23, 2019, the social worker arrived at the foster home to pick up the child for a monitored visit. The child refused to go and held onto the door. The foster parents and the social worker encouraged the child to attend the visit.

On August 13, 2019, the child again refused to leave the foster home to attend the visit.

On August 27, 2019, when the social worker arrived to take the child to the visit, the child began to cry and said that she did not want to visit with mother and the older sisters because they “ma[de] her sad.” After 40 minutes, the child agreed to go to the visit if foster mother got into the car with her. Foster mother got into the car with the child and then got out of the car once the child was seated. This caused the child to cry. During the drive

to the visit, the child repeatedly stated that she did not want to attend the visit. At the conclusion of the visit, as the social worker transported the child to her foster home, the child said several times that “she wanted to be returned home to her ‘mommy [foster mother],’ and she did not want to go [to] the visits again.”

On September 24, 2019, the child refused to attend a visit and reported that the older sisters said mean things about her foster family, which made her sad.

L. Last Minute Information Filed October 29, 2019⁵

The Department reported that the child appeared bonded to the members of the foster family and they to her. The foster parents were interested in adopting the child and the child wished to be adopted by them.

M. Section 366.26 Hearing

On November 25, 2019, the juvenile court held the section 366.26 hearing. Counsel for the older sisters argued that the sibling relationship exception to the termination of parental rights applied. Mother’s counsel contended that both the sibling relationship exception and the parental benefit exception applied. Mother testified that the child was happy to see mother and the older sisters during the visits, and that mother would hug, play

⁵ Although the Last Minute Information was filed on October 29, 2019, and the Status Review Report was filed on October 30, 2019, in context, it appears that the Last Minute Information was prepared after the Status Review Report.

with, and read to the child. According to mother, the child was sad to leave at the end of the visits.

The child's counsel requested that mother's parental rights be terminated. Although counsel acknowledged that the child loved her mother and the older sisters, counsel submitted that no exception to the termination of parental rights applied. Counsel also stated that the child wished to stay with her foster family and did not want to attend visits. In counsel's view, the visits were distressing for the child. The Department joined the child's counsel's arguments.

The juvenile court found by clear and convincing evidence that the child was adoptable. The court expressed concern over mother's credibility and noted that her testimony about the quality of the visits with the child was contradicted by other evidence. The court found that the child's visits with mother and the older sisters had a "detrimental" and "negative" effect on her. Further, the court found there was no compelling reason that termination of parental rights would be detrimental to the child and terminated mother's parental rights.

Mother timely appealed.

III. DISCUSSION

A. Section 366.26

"At a section 366.26 hearing, the juvenile court selects and implements a permanent plan for the dependent child." (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1299.) At that stage of the proceedings, the preferred plan is adoption. (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 645.) "First, the court determines

whether there is clear and convincing evidence the child is likely to be adopted within a reasonable time. [Citations.] Then, if the court finds by clear and convincing evidence the child is likely to be adopted, the statute mandates judicial termination of parental rights unless the parent opposing termination can demonstrate one of the enumerated statutory exceptions applies.” (*Id.* at pp. 645–646.)

“Reflecting the Legislature’s preference for adoption when possible, the “sibling relationship exception contains strong language creating a heavy burden for the party opposing adoption. It only applies when the juvenile court determines that there is a ‘compelling reason’ for concluding that the termination of parental rights would be ‘detrimental’ to the child due to ‘substantial interference’ with a sibling relationship.” [Citation.] Indeed, even if adoption would interfere with a strong sibling relationship, the court must nevertheless weigh the benefit to the child of continuing the sibling relationship against the benefit the child would receive by gaining a permanent home through adoption. [Citation.]’ (*In re Celine R.* (2003) 31 Cal.4th 45, 61)” (*In re J.S.* (2017) 10 Cal.App.5th 1071, 1080 (*J.S.*)). “Many siblings have a relationship with each other, but would not suffer detriment if that relationship ended. If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship.” (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952, fn. omitted.)

The juvenile court should consider “the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close

and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.” (§ 366.26, subd. (c)(1)(B)(v).)

“The parental benefit exception applies when there is a compelling reason that the termination of parental rights would be detrimental to the child. This exception can only be found when the parents have maintained regular visitation and contact with the child *and* the child would benefit from continuing the relationship. (§ 366.26, subd. (c)(1)(B)(i).)” (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 394–395 (*Anthony B.*); accord, *In re E.T.* (2018) 31 Cal.App.5th 68, 76.)

There is a split of authority regarding the appropriate standard of review for determining whether an exception to the termination of parental rights at a section 366.26 hearing applies. (See *In re Caden C.* (2019) 34 Cal.App.5th 87, 106, review granted July 24, 2019, S255839.)⁶ Here, we apply the substantial evidence standard of review to factual determinations, such as whether the child has a close and strong bond with siblings, whether a parent has shown consistent visitation, and the existence of a parental relationship, and an abuse of discretion standard of review to the court’s determination of whether termination of parental rights would be detrimental to the child when weighed against the benefits of adoption. (*J.S.*, *supra*, 10 Cal.App.5th at p. 1080; *Anthony B.*, *supra*, 239 Cal.App.4th at p. 395.)

⁶ Our Supreme Court is specifically reviewing what standard governs appellate review of the parental benefit exception to the termination of parental rights.

B. *Sibling Relationship Exception*

Mother contends that the juvenile court erred in failing to apply the sibling relationship exception to the termination of her parental rights. We disagree. The child, who was four years old at the time of the section 366.26 hearing, had lived apart from the older sisters for almost half her life. Further, although the child shared a close bond with the older sisters, there was substantial evidence to support the court's conclusion that the relationship negatively affected her. The older sisters directed the child not to love her foster family and the child complained that she did not want to attend visits with the older sisters because her interactions with them made her sad. The court did not abuse its discretion in concluding that the sibling relationship exception did not apply. (*J.S., supra*, 10 Cal.App.5th at p. 1080 [“[T]he ultimate question is whether adoption would be detrimental to the adoptive child, not someone else”].)

C. *Parental Benefit Exception*

Mother next contends that the juvenile court erred in failing to find that the parental benefit exception applied. As an initial matter, we note that it is not clear whether the court found that mother maintained regular visitation and contact with the child.⁷ Even if we were to assume for purposes of this opinion

⁷ The juvenile court's minute order states that it found “that the parent has not maintained regular visitation with the child and has not established a bond with the child” but the transcript does not expressly include that finding. We note that mother interjected during the hearing while the court was making

that notwithstanding mother's frequent cancellation and late appearance for visits, mother had maintained regular visitation and contact with the child, we would conclude the court did not err. Mother was hostile and confrontational with Department staff during visits, brought unidentified men to the visits, and discussed case details with the child. Further, the child did not wish to visit with mother and exhibited signs of anxiety and distress. Thus, there was substantial evidence that ongoing contact with mother was negatively affecting the child and she would not benefit from continuing her relationship with mother. The court did not abuse its discretion in finding that the parental benefit exception to the termination of parental rights did not apply.

certain findings, which caused the court reporter to interrupt the proceedings on three separate occasions. As a result, the court's recitation of its findings is unclear in certain places.

IV. DISPOSITION

The order terminating parental rights is affirmed.

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KIM, J.

We concur:

BAKER, Acting P. J.

MOOR, J.